

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:  
BLOCKCRUSHR, INC., :  
: 20-CV-3134 (FB) (RLM)  
Plaintiff, :  
: October 7, 2020  
:  
v. : Brooklyn, New York  
:  
CONSENSYS, FUND, IIP, :  
et al., :  
Defendant. :  
-----X

TRANSCRIPT OF CIVIL CAUSE FOR INITIAL CONFERENCE  
BEFORE THE HONORABLE ROANNE L. MANN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: KYLE ROCHE, ESQ.

For the Defendant: TIBOR NAGY, ESQ.

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1                   THE COURT: Good afternoon, this is Judge  
2 Mann on the line. I'm conducting a telephonic initial  
3 conference in BlockCrushr, Incorporated v. ConsenSys,  
4 Inc., et al., 20-CV-3134. I hope everyone is safe and  
5 healthy.

6                   Do I have plaintiff's counsel on the line?

7                   MR. ROCHE: Yes, your Honor, this is Kyle  
8 Roche from Roche Cyrulnik Freedman for plaintiff, and  
9 I'm joined by my colleagues, Richard Cipolla and Warren  
10 Li, also from Roche Cyrulnik Freedman.

11                  THE COURT: I'm sorry, I didn't catch the  
12 second name. I don't believe that individual is on the  
13 docket, so could I have that name again?

14                  MR. ROCHE: Yes, Warren Li.

15                  THE COURT: No, I got your name. Richard,  
16 and I didn't catch the last name.

17                  MR. ROCHE: Cipolla, C-i-p-o-l-l-a.

18                  THE COURT: All right. And who is on for  
19 defendants?

20                  MR. NAGY: Good afternoon, your Honor. This  
21 is Tibor Nagy of Dontzin Nagy. I'm here for  
22 defendants, and my colleague, Heidi Schumann, is on the  
23 phone as well.

24                  THE COURT: And I don't believe Ms. Schumann  
25 is on the docket, either. Could I have the spelling of

1 your last name, Ms. Schuman?

2 MS. SCHUMANN: Yes, your Honor. It's S-c-h-  
3 u-m-a-n-n.

4 THE COURT: All right, welcome to all of  
5 you. As I state at the outset, this is on for a  
6 telephonic initial conference. Before I turn to the  
7 questionnaire that counsel have submitted, I would like  
8 to get a better understanding about the underlying  
9 facts of the case. I've read the complaint, which is  
10 quite detailed and has given me a fairly good sense of  
11 what the plaintiff's contentions are. But as is true  
12 in most cases, the answer is not that illuminating, so  
13 I will give defense counsel an opportunity to set forth  
14 your theory of the case.

15 So will that be Mr. Nagy or Ms. Schumann  
16 taking the lead on that?

17 MR. NAGY: Mr. Nagy, your Honor. Thank you  
18 for the opportunity to address that. I think, your  
19 Honor, we have several responses and theories of the  
20 case.

21 Let me start first and foremost by saying we  
22 certainly dispute any allegation that we  
23 misappropriated any trade secrets. This technology at  
24 issue here, this idea of using cryptocurrency for  
25 recurring payments is fairly well known in the

1 marketplace. It was considered by a lot of companies,  
2 not just this one, your Honor, and no one ultimately  
3 had decided to do it because it's just a bad idea.

4 I would point out, your Honor, in this case,  
5 as you say in the complaint, the entity that was  
6 alleged to have misappropriated the trade secrets, this  
7 entity called Daisy -- Daisy, your Honor, I don't  
8 believe this is in dispute. Daisy never took off, has  
9 been wound down, never had any customers or any  
10 revenues much less any profits, so there's really no  
11 money at stake in this case. Again, we dispute that  
12 there was any misappropriation of trade secrets but  
13 we're kind of baffled that this is being pursued at all  
14 for that reason. And I would note, tellingly,  
15 plaintiff didn't even sue Daisy. In most trade secret  
16 cases, the target that's using the alleged trade  
17 secrets is sued and you ask for an injunction stopping  
18 it from doing what it's doing. That's not present here  
19 because that just didn't happen here.

20 In addition, your Honor, as I alluded to,  
21 this isn't a particularly secret idea, this central  
22 idea of using cryptocurrency for recurring payments. A  
23 lot of other companies considered it. If we go the  
24 distance, at some point, we think there will be a motion  
25 for summary judgment before you. It will point to the

1 lack of evidence of any misappropriation. It will also  
2 point to the fact that there are no real trade secrets  
3 at issue in this case.

4 One of the things, your Honor, that makes  
5 this particular case unique is -- I spoke with counsel  
6 before he even filed suit and as you saw, your Honor,  
7 on your docket, we entered into an agreement whereby  
8 defendants agreed that we would not pursue any Rule 12  
9 motion. And in exchange, the key thing we wanted was  
10 for counsel to tell us, what are these purported trade  
11 secrets? Just disclose them to us. And we got that  
12 agreement by way of an interrogatory. The plaintiff  
13 here has told us what the trade secrets are.

14 We have some dispute as to whether the  
15 response they sent us is adequate. We're meeting and  
16 conferring about that now. We may need your assistance  
17 with that. Hopefully, we don't. But the point here  
18 is, we wanted to get that information early and we  
19 certainly are confident about using it in a summary  
20 judgment motion down the line, based on the various  
21 theories I've mentioned, that these aren't really trade  
22 secrets, that this company really didn't have any of  
23 its trade secrets misappropriated by us, and that there  
24 are no damages here at all, et cetera.

25 I think the last thing, your Honor, I'll say

1 is, on this damages point, we recently got pursuant to  
2 your order initial disclosures from counsel for  
3 plaintiff, and we looked at the claim of damages and we  
4 really can't understand it. We're at a loss as to what  
5 the damages here are. There's no concrete description  
6 of what they are at all, and I would -- it seems to us  
7 there really can't be, given the reality that Daisy  
8 never took off, never had any revenues, et cetera. So  
9 that, your Honor, in a nutshell is our view of this  
10 case.

11 THE COURT: Hello?

12 MR. NAGY: Yes, Mr. Nagy speaking. I'm  
13 still here.

14 THE COURT: All right, is there anything  
15 else for the Court to tend to?

16 MR. NAGY: Your Honor, Mr. Nagy speaking  
17 again. The only thing, your Honor, I would bring to  
18 your attention is, I think we have -- counsel for  
19 plaintiff and myself, we have worked out I think almost  
20 every issue in your questionnaire by agreement. I  
21 think to date, we have worked well together in reaching  
22 agreement on issues, and I think a testament to that  
23 fact is the fact that we were able to work out an  
24 agreement along the lines that I discussed about  
25 avoiding Rule 12 motions in exchange for an

1 interrogatory response.

2 I would just call to your attention that if  
3 we're unable -- we have that response now and we think  
4 it's inadequate in several ways. If we're unable to  
5 resolve it, that is an issue that, on our side, we  
6 would want to get some quick relief on, so we would  
7 come to you seeking that relief. I hope we'll avoid  
8 that. Counsel and I conferred and we've agreed that  
9 they're going to supplement that response, but that is  
10 a time sensitive issue for us because it's something we  
11 specifically bargained for early in the case. Other  
12 than that, I think every issue, as you can see in the  
13 questionnaire we submitted, has been worked out by  
14 agreement.

15 THE COURT: Well, before we turn to  
16 scheduling, would counsel for plaintiff like to respond  
17 to that presentation?

18 MR. ROCHE: Your Honor, I'll respond  
19 briefly, just taking Mr. Nagy's points in reverse  
20 order. I do think we've worked well together to date.  
21 And with respect to his points on the interrogatory  
22 response, the agreement, the pre-suit agreement that he  
23 referenced specifically contemplated a supplement to  
24 those interrogatory responses relating to the source  
25 code. In fairness to Mr. Nagy, he has asked for things

1 outside of the source code specs for us to revisit and  
2 has asked for some more detail to what is already a  
3 very detailed description of the trade secrets that are  
4 at issue in this litigation. We're going to do that  
5 and we're going to be as detailed as possible and as we  
6 think the law requires us to be. I hope that we can  
7 work that out between us but if not, then we'll be back  
8 in front of you on that.

9 As to the merits of the case, you know, I do  
10 think the existence of the agreement not to do 12(b) (6)  
11 motions speak to the, as you pointed out, the detailed  
12 nature of the allegations in the complaint are not  
13 legally insufficient.

14 As to the question on damages, Mr. Nagy  
15 points out that, yes, we did not sue Daisy Payments,  
16 the group that initially took the trade secrets. The  
17 reason that is is because that product, the recurring  
18 payment platform, was incorporated into the parent  
19 company, ConsenSys and in fact has been advertised in a  
20 suite of software products that they intend to offer.  
21 And while we don't have full access at this time to  
22 what defendants have used or how they've profited or  
23 how they intend to profit from the trade secrets, we do  
24 intend to seek that type of information in discovery  
25 and we feel confident we will be able to show

1 significant damages at summary judgment and at trial.

2 As to, you know, the merits of liability in  
3 this case, there are two theories of liability. One is  
4 breach of contract, the second is trade secrets. I'm  
5 not going to get into the details of either of those  
6 theories unless your Honor would like. But as to the  
7 trade secrets liability, even -- I believe Mr. Nagy is  
8 saying that -- I'm not aware of this. We have not  
9 gotten there in discovery, but that this idea may have  
10 existed in the marketplace. But even if the idea  
11 itself existed in the marketplace, that does not  
12 foreclose liability and trade secrets.

13 The law is clear that taking trade secrets  
14 that speed up your ability to get to market is a basis  
15 for trade secrets liability. And while I do think  
16 there are a lot of facts that we're going to need to  
17 develop to walk the Court and potentially a jury  
18 through the mechanics of the trade secrets test and how  
19 that is incorporated to a damages model under the TPSA,  
20 we're confident we'll be able to show that at the end  
21 of discovery.

22 THE COURT: All right. And on that note, I  
23 will turn to scheduling. I see from the questionnaire  
24 as well as from statements made by defense counsel that  
25 the parties have exchanged initial disclosures. I'm

1 glad to hear that. The parties have proposed to have  
2 until May 28<sup>th</sup> to complete fact discovery. That's  
3 somewhat longer than I normally would allow, at least  
4 for the initial deadline for fact discovery in a civil  
5 case. My concern in this case is that then we have  
6 expert discovery occurring during the summer months.

7 Is it realistic to have expert discovery  
8 over the summer? If so, I'll set the deadlines  
9 requested. Otherwise, I'd be more inclined to move  
10 everything back by -- that is forward, closer by one  
11 month but I look to counsel for guidance.

12 MR. NAGY: Your Honor, this is Mr. Nagy for  
13 defendants. I believe both counsel for plaintiff and I  
14 have looked at our trial schedules and on this  
15 particular issue -- we totally hear you about the  
16 summer months. In this particular case, I think we  
17 agreed that it was realistic and necessary for us, just  
18 based on our existing schedules. We've both worked  
19 with experts in this area before. We're confident  
20 we'll be able to get it done over the summer, at least  
21 from our perspective, your Honor, on the defense side.  
22 We think it's certainly realistic.

23 THE COURT: So you think it's realistic not  
24 only for counsel but also for the experts?

25 MR. NAGY: Your Honor, Tibor Nagy again.

1 Yes, I do.

2 THE COURT: All right.

3 MR. ROCHE: Your Honor, this is counsel for  
4 -- this is Mr. Roche. We have also already confirmed  
5 availability, so we're confident, to echo Mr. Nagy's  
6 point, that we will be able to get it done during the  
7 summer.

8 THE COURT: All right. So I'm going to set  
9 this down for a deadline of May 28<sup>th</sup> of next year for  
10 the completion of fact discovery. With respect to  
11 expert disclosures, there will be two rounds. In the  
12 first round, the party with the burden of proof will  
13 serve its opening expert disclosures report as well as  
14 the necessary information regarding the experts'  
15 qualifications and background. That opening round, the  
16 deadline will be July 2<sup>nd</sup>. The next round of expert  
17 rebuttal disclosures will be July 30<sup>th</sup>. And expert  
18 depositions are to completed by August 27<sup>th</sup> of 2021.

19 With respect to dispositive motions, the  
20 parties have asked for almost a month to request a pre-  
21 motion conference before the district court. Judge  
22 Block, the district court judge, does require that you  
23 first request a pre-motion conference before him. I  
24 haven't checked his particular individual rules lately  
25 but just based on my knowledge of the usual individual

1       rules of the district court judges in this district,  
2       usually, those are letters of three or four pages,  
3       letter briefs of three or four pages. Do you really  
4       need a full month to -- between the close of expert  
5       discovery and the deadline for making a request for a  
6       pre-motion conference?

7                    MR. NAGY: Your Honor, it's Tibor Nagy. I  
8       suppose we as the defendants are the likely party to be  
9       bringing a motion like this, and the short answer is  
10      no, we don't. Hearing you say it, your Honor, you're  
11      right. We can get it done more quickly. I would ask  
12      that we have just -- at least a little bit of time  
13      after Labor Day to get such a letter in, if it might be  
14      maybe the end of that week or one week after Labor Day,  
15      but we can certainly shave off several weeks there.

16                  THE COURT: Is plaintiff's counsel in  
17      agreement, Mr. Roche?

18                  MR. ROCHE: Plaintiff has no objection to  
19      the -- to moving up that deadline a couple of weeks.

20                  THE COURT: So September 13<sup>th</sup>.

21                  MR. NAGY: This Mr. Nagy for defendants.

22                  MR. ROCHE: It's fine for me if it's fine  
23      for Mr. Nagy.

24                  MR. NAGY: That's great, your Honor, and I  
25      was about to say Labor Day is the 6<sup>th</sup> of September,

1       2021. It looks like you beat me to that and that's  
2 great. If you would give us that one week, that would  
3 be fantastic.

4                     THE COURT: All right. And then you just  
5 check Judge Block's rules with respect to when the  
6 response to that is in. But at least this way, both  
7 sides should be presented to Judge Block in September,  
8 so rather than prolonging that period of time  
9 unnecessarily.

10                  I'm just looking to see the proposed  
11 deadline for amended pleadings. It looks like neither  
12 side is anticipating amending the pleadings.  
13 Therefore, I will deem the deadline to have passed for  
14 adding parties or amending the pleadings. That does  
15 not mean that you're barred from amending if something  
16 develops in the course of the case and there's good  
17 cause to amend but it does mean you would need further  
18 leave of the Court to amend on a showing of good cause  
19 and due diligence.

20                  Are there any other dates or deadlines that  
21 any of you would like the Court to include in its  
22 minute entry?

23                  MR. NAGY: Your Honor, Tibor Nagy for  
24 defendants. No from our side, thank you.

25                  MR. ROCHE: Your Honor, Mr. Roche for

1 plaintiff. No further dates on our end.

2 THE COURT: Now, in every or I would say 99%  
3 of the civil cases assigned to me, I schedule a  
4 settlement conference with the parties or I refer the  
5 case to court-annexed mediation. In this case, I would  
6 certainly be open to referring it to court-annexed  
7 mediation if you would like to be able to find a  
8 mediator who has expertise in this particular area.

9 Do counsel -- I don't know if you've  
10 discussed this with one another. Do you have a  
11 preference in this case?

12 MR. NAGY: Your Honor, this is Tibor Nagy  
13 for defendants.

14 MR. ROCHE: Your Honor --

15 MR. NAGY: Sorry, Kyle, we keep doing this.

16 MR. ROCHE: Go ahead.

17 MR. NAGY: Thanks, I'll be brief.

18 I think counsel and I, your Honor, had a  
19 very active discussion about settlement before the suit  
20 was filed. And given that discussion, which led to  
21 this request from us that we get this disclosure of the  
22 trade secrets, I don't think it would be productive now  
23 to have that discussion or a mediation. I think later  
24 in the proceedings, after some discovery has  
25 transpired, I think the parties will be in a better

1 position. My own preference, your Honor, would be to  
2 have a conference before you but I'm open to a  
3 mediation and I'm happy to talk to counsel about it.  
4 So I think if we're given some time and we're allowed  
5 to do a little discovery, later in the proceedings I  
6 think will be a more opportune time, and I'll be happy  
7 to work with counsel. I don't have a strong preference  
8 there. I'm sure we can work it out by agreement. But  
9 on the defense side, our only view is that right now is  
10 not the right time.

11 THE COURT: I wasn't planning to put it down  
12 for an immediate settlement conference or mediation.  
13 But in any event -- and I'll certainly hear from  
14 plaintiff's counsel. What I would be prepared to do as  
15 an alternative is to set a control date by which  
16 counsel can confer with one another and then can file a  
17 letter motion proposing either the scheduling of a  
18 settlement conference or referral to court-annexed  
19 mediation with an approximate time period when the  
20 parties feel they will have sufficient discovery to  
21 have meaningful settlement discussions.

22 So turning now to Mr. Roche, is that  
23 agreeable to plaintiff?

24 MR. ROCHE: Yes, your Honor, and I echo Mr.  
25 Nagy's point on probably the later in discovery, the

1 better. I think your proposal makes a lot of sense.

2 THE COURT: All right, later in discovery.

3 Give me a month when you think it makes sense to at  
4 least have the control date, keeping in mind that if  
5 the case, for example, is referred for court-annexed  
6 mediation, it could be another month or two before the  
7 parties have agreed upon a mediator, have spoken with  
8 the mediator, and have come up with a date. Let's not  
9 have it too late in the process because then it may get  
10 impractical to schedule something right away.

11 MR. ROCHE: Your Honor, my thinking would be  
12 a month before discovery is over. I'm pulling up a  
13 calendar now. Discovery closes May 28<sup>th</sup>. I think --  
14 and the reason for that is, if there is the prospect of  
15 settlement, the parties would be able to avoid expert  
16 costs if we plan to have the settlement discussion  
17 either right at the end of the discovery or right at  
18 the beginning of the expert discovery phase. So if we  
19 set the date for either April 30<sup>th</sup> or 23<sup>rd</sup>, I think that  
20 would give the parties time to review the discovery  
21 they have and potentially avoid, if there is potential  
22 for a settlement, incurring expert fees.

23 THE COURT: Well, again, if we set the  
24 control date for the end of April and fact discovery  
25 closes in a month, it may be a couple of months before

1 the parties actually sit down with one another, and  
2 fingers crossed that we're not going to be doing this  
3 virtually, but at least the parties physically or  
4 remotely sit down to engage in settlement discussions.

5 I'm hesitant to put it off that long because  
6 it may well be that there won't be a mediation or a  
7 settlement conference until July or until late in June,  
8 when the experts are already putting in time preparing  
9 their reports. So I would propose earlier in April but  
10 I throw that out to counsel for their thoughts.

11 MR. NAGY: Your Honor, Tibor Nagy for  
12 defendants. That makes sense to us.

13 THE COURT: Mr. Roche?

14 MR. ROCHE: That makes sense for us as well.

15 THE COURT: All right. And remember, if in  
16 early April, you're in the middle of some very critical  
17 discovery, you can always write to the Court and  
18 request additional time to make the -- to get back to  
19 the Court about how you would like to proceed to try  
20 and resolve the case. But in the meantime, let's say  
21 April 5<sup>th</sup> will be the control date. That's the date by  
22 which you talk with one another, come to some consensus  
23 about whether you prefer a settlement conference versus  
24 court-annexed mediation, and provide an approximate  
25 time frame as to ideally when you would like to have

1 those discussions.

2                 Now, I referred to a letter motion. In  
3 accordance with my individual rules, any time that  
4 you're asking this Court to take any action on a  
5 submission, be sure to docket it as an ECF motion  
6 event, even if it's letter form. The reason for that  
7 is, we have an electronic tickler system and if you use  
8 the motion event, that tickler system is activated and  
9 it lets us keep track -- helps us keep track of pending  
10 applications in our hundreds of cases.

11                 Let me just go through some housekeeping  
12 matters with you. As I indicated earlier, the schedule  
13 that I've given you on the record will be included in a  
14 minute entry. I expect that it will be docketed into  
15 the ECF court file later this afternoon. I do expect  
16 you to comply with these deadlines. That's not to  
17 suggest that they're etched in stone. If for any  
18 reason you need to modify any of the dates or  
19 deadlines, either in the minute entry or in any  
20 subsequent order of the Court, you do need leave of the  
21 Court for that.

22                 My individual rules specify how you should  
23 go about making such a request. The first thing you  
24 should do is speak with opposing counsel, see if you're  
25 in agreement, and then file a letter motion that is a

1 letter to the Court but docketed as an ECF motion  
2 event. Be sure to include in the letter what change or  
3 changes you need, the reason for the request and  
4 whether it's on consent or not. And be sure to include  
5 all the dates and deadlines that you want changed. For  
6 example, if you say you want to put off fact discovery  
7 but you don't address expert discovery, it's probably a  
8 pretty good inference that you want everything pushed  
9 back, but don't leave me guessing or speculating. Just  
10 make clear all the deadlines that would be affected  
11 that you'd like to have changed.

12 If any discovery disputes come up during the  
13 course of the case, try to work those out informally  
14 before getting the Court involved. I really don't need  
15 to tell you that. You've already talked about how  
16 you've been engaged in a meet and confer over  
17 plaintiff's interrogatory responses or I guess -- I  
18 can't remember now whether it was plaintiff's or  
19 defendant's. But in any event, you know the meet-and-  
20 confer requirements. If you're unable to resolve a  
21 discovery dispute informally, any application that you  
22 want to make on a discovery issue should come to me in  
23 the first instance rather than to Judge Block. My  
24 individual rules incorporate by reference Local Civil  
25 Rule 37.3(c). Discovery disputes ordinarily should be

1 addressed in letter motions and letter responses of up  
2 to three pages plus attachments.

3                   The questionnaire that I had you prepare is  
4 for my information only. This is not a court order  
5 even though it's now part of the court record because I  
6 had you file it. I'm not incorporating it by reference  
7 into the Court's minute entry.

8                   The items that deal with the scope of  
9 discovery, items 2 through 6, I see that the parties  
10 have either agreed upon the information or have  
11 indicated they've reserved their right to go beyond it,  
12 but I don't see any red flags in any of those responses  
13 that cry out for any judicial resolution at this time.  
14 So I'm not going to address any of those issues other  
15 than to say that since the minute entry is not going to  
16 include those items, you're free to modify them on  
17 consent without further leave of the Court. They're  
18 not part of a court order. For example, if it turns  
19 out you want more than 100 requests to admit or more  
20 than 25 interrogatories, just speak with opposing  
21 counsel. Try to work that out informally and if you're  
22 able to do so, I don't need to hear from you about it.

23                   I do encourage the parties to have  
24 settlement discussions early and often. And if the  
25 discovery that you're taking leads you to have those

1 discussions sooner than you're currently anticipating,  
2 let me know right away. If you do reach an agreement  
3 in principle, file a letter motion asking that the  
4 existing schedule be held in abeyance.

5 That covers everything that I had intended  
6 to address. Is there anything else that any of you  
7 would like to discuss at this time?

8 MR. ROCHE: Your Honor, this is Kyle Roche  
9 for plaintiff. Nothing further on our end.

10 THE COURT: Anything for defendants?

11 MR. NAGY: Tibor Nagy here, your Honor. No  
12 for defendants, thank you.

13 THE COURT: All right, everyone take care.  
14 I'm going to terminate this proceeding.

15 MR. NAGY: Thank you, your Honor.

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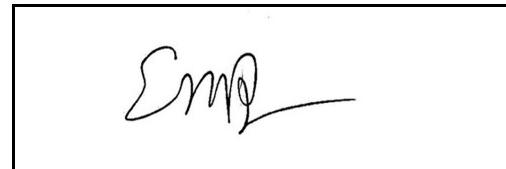
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I certify that the foregoing is a correct  
transcript from the electronic sound recording of the  
proceedings in the above-entitled matter.

A rectangular box containing a handwritten signature in black ink. The signature appears to read "EMB".

ELIZABETH BARRON

November 10, 2020